



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166838

PRELIMINARY RECITALS

Pursuant to a petition filed June 22, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2015, at Sheboygan, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment was correctly reduced.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mitch Birkey

Sheboygan County Department of Human Services
3620 Wilgus Ave
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner filed this appeal to contest a reduction in the amount of her FoodShare allotment from \$351.00 per month to \$217 per month effective July 1, 2015. This occurred after a health care benefit review for Petitioner's son revealed earned income for him.
3. Petitioner's household size is three. This consists of herself, her spouse and her son.

4. The agency determined Petitioner's household income to be \$1920.88 per month with \$1472.32 attributable to Petitioner's earned income. Petitioner was determined to work 32 hours per week at \$10.20 per hour plus a \$.50 per hour shift differential and this was verified via employer verification and check stubs. Thus the agency attributed \$448.56 to the gross income of Petitioner's son but there are no records demonstrating how this figure was arrived at (for example, pay stubs or employer verification).
5. Petitioner was given credit for the following expenses in the FoodShare allotment calculation: a standard deduction of \$155.00, an earned income deduction of 20%, rent costs of \$650.00 and a standard utility allowance of \$446.00.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4*. The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1*. This includes the income of any child over age 18. *FSH, §4.3.2.2, # 3*.

The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1*. Further, income must be converted to a monthly amount. Thus if a person is paid every week, gross income is multiplied by 4.3 weeks per month to come up with an average of monthly income. If a person is paid every other week, gross income is multiplied by 2.15 to convert that to monthly income.

Once income is gross household income is determined eligibility and, if eligible, allotment levels are determined. The gross income limit for a household of three is \$3300.00. *FSH, §8.1.1.1*. Petitioner's gross income is less than this.

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (\$446.00 where there is a heat obligation); the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5)*. There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.3 and 8.1.3*.

The problem here is that there is no evidence in the record to demonstrate how much income Petitioner's son earns. The burden of proof lies with the agency. Without records to show how much income Petitioner's son has I cannot conclude that benefits have been correctly calculated.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that Petitioner's household income has been correctly calculated.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to take the steps necessary to redetermine Petitioner's household income by using verifiable income for Petitioner's son. A new notice must be issued and it is suggested that this be a manual notice that explains how the income for Petitioner's son was determined. If necessary, FoodShare benefits must be adjusted based on the new calculation. These steps must be done within 10 days of the date of this Decision. Petitioner may appeal the determination of her son's income and any new determination of the FoodShare allotment.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of August, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 18, 2015.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability